

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 1406 of 1996 (O&M)
Date of decision: 8.12. 2009

Assa Singh and another

.....Appellants

Versus

Dilbag Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Narinder Luchy, Advocate for
Mr.G.S.Nagra, Advocate,
for the appellant.

Mr.Premjit Kalia, Advocate,
for the respondents.

SABINA, J.

Plaintiffs-appellants filed a suit for declaration and permanent injunction and the same was decreed by the Additional Senior Sub Judge, Ajnala vide judgment and decree dated 11.5.1994. In appeal, the said judgment and decree were set aside by the Additional District Judge, Amritsar vide judgment and decree dated 17.4.1996 and the suit of the plaintiffs was dismissed. Hence, the present appeal by the plaintiffs.

Brief facts of the case, as noticed by the lower appellate Court in para Nos. 2 to 4 of its judgment, are as under:-

“2. The case of the plaintiff as contained in the plaint is that the suit land was originally owned by Bakshish Singh son of Sohan Singh, father of the plaintiffs who has since died on 26.9.1989. that Bakshish Singh deceased used to reside with the plaintiffs and the plaintiffs served him in his old age and from the services rendered by the plaintiffs and Bakshish Singh in his sound disposing mind and without any pressure executed a valid registered will dated 1.9.1989 in favour of the plaintiffs. Since then plaintiffs are the owners in possession of the suit land, the defendants have no right, title or interest in the same. Defendant No. 1 was not in the order and control of S. Bakshish Singh deceased. He was not serving the deceased and was also not living with Bakshish Singh deceased. That the defendants in connivance with the revenue authorities have got the mutation entered in their favour without giving notice to the plaintiffs which is illegal, void and ineffective and is liable to be set aside, hence this suit.

3. On notice, Dilbagh Singh defendant No. 1 appeared and filed the written statement on 26.3.1992 admitting the claim of the plaintiffs to be correct. Thereafter Dilbagh Singh and the defendant No. 2 filed joint written statement on 17.17.1992 controverting all the main

allegations of the plaintiffs as contained in the plaint-
inter alia, they pleaded that the plaintiffs have no locus
standi to file the present suit which is not maintainable.
The the plaintiffs have no cause of action and that the suit
is not properly valued for the purposes of court fee and
jurisdiction and that the plaintiffs are estopped by their act
and conduct from filing the present suit. On merits, it was
pleaded that the alleged will is forged and fabricated
document and is out come of the mis-representation and
fraud. Other averments were denied.

4. Thereafter Dilbagh Singh defendant No. 1 filed
an application under Order 6 Rule 17 C.P.C. read with
section 151 C.P.C. for amendment of the written
statement which was allowed vide order dated 4.12.1992
and Dilbagh Singh defendant again filed amended written
statement controverting all the main allegations of the
plaintiffs as contained in the plaint. He also took the
same objections taken by him and Amarjit Kaur in their
written statement filed on 17.7.1992.”

On the pleadings of the parties, following issues were
framed by the trial Court:-

1. Whether deceased Bakshish Singh executed his
last and valid will dated 1.9.1989 regarding the suit
properties in favour of the plaintiffs?OPP

2. Whether the plaintiffs are entitled to the relief of declaration as prayed for through this suit?OPP
3. Whether plaintiffs are entitled to the relief of permanent prohibitory injunction as prayed through this suit? OPP
4. Is this suit not maintainable? OPP
5. Whether plaintiffs are estopped from filing this suit through their act and conduct?OPD
- 6 Whether plaintiffs have no cause of action nor any locus standi to file this suit? OPD
7. Relief.

After hearing learned counsel for the parties, I am of the opinion that the present appeal deserves to be allowed.

The substantial question of law that arises in this case is “whether the learned Additional District Judge had erred in holding that the Will in question was not duly proved?”

The plaintiffs had filed a suit for declaration that they were exclusive owners in possession of the suit land in equal shares on the basis of Will executed by their father Bakshish Singh dated 1.9.1989 in their favour.

A Will is a document that speaks of the mind of the deceased after his death. The executant of the Will is though never available for deposing as to under what circumstances, he has executed the Will. This aspect introduces an element of solemnity in

the decision of the question whether the document propounded is proved to be the last Will of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will. A Will is required to be proved like any other document. Since the Will is required to be attested and as per Section 68 of the Indian Evidence Act, 1872, at least one attesting witness is required to be examined to prove due execution of the Will. The attesting witness is required to establish that the Will in question was executed by the testator in the presence of attesting witnesses and they had attested the same in the presence of the testator. In a case where the Will is a registered document then the endorsement made by the Sub Registrar that the Will had been thumb marked or signed by the executant in his presence after it was read over to the executant has a presumption of truth. It is also a settled proposition of law that in connection with Wills execution of which is alleged to be surrounded by suspicious circumstances, the test of satisfaction of judicial conscience has been evolved. That test emphasis that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a solemn question and by reason of suspicious circumstances, the Court has to be fully satisfied that the Will has been validly executed by the testator.

In the present case, the Will in question is a registered

document. It was executed by Bakshish Singh on 1.9.1989 and was got registered on the same day. In order to prove the due execution of the Will, plaintiffs examined Ajit Singh, one of the attesting witness of the Will. The said witness categorically deposed that the Will in question had been read over to Bakshish Singh after it was scribed and he had thumb marked the same in the presence of the witnesses. Thereafter, he had attested the Will. The Will was also got registered in his presence. Giani Uttam Singh, deed writer, deposed that he had scribed the Will at the instance of Bakshish Singh and it was read over to Bakshish Singh and thereafter, Bakshish Singh had thumb marked the same after admitting it to be correct and the attesting witnesses had attested the same. The Will was duly registered by the Sub Registrar, Ajnala. A presumption of truth is attached to the endorsement made by the Registrar to the effect that the Will in question was read over to the executant and he had thumb marked the endorsement at the time of registration. The said presumption has not been rebutted by the defendants. A perusal of the Will reveals that Bakshish Singh had given reasons for disinheriting the defendants. The executant has stated in the Will that Dilbag Singh, his son was a unworthy (*lofar*) and was a drug addict and fought with him. Dilbag Singh did not serve him and due to these reasons, he did not want to give any share out of his property to Dilbag Singh. So far as the daughter of the executant, Amarjit Kaur-defendant No.2, was concerned, the executant has

stated that his daughter was married and was residing happily in her in-laws house. Hence, the Will in question cannot be said to be surrounded by any suspicious circumstance. The executant has given sufficient reasons for disinheriting the defendants. The learned Additional District Judge has dis-believed the Will on flimsy reasons. The approach adopted by the learned Additional District Judge is unwarranted. The Will in question is a registered document and has been duly proved on record. Learned trial Court, on the other hand, has rightly held that the Will in question was a genuine document. Hence, the substantial question of law that arises in this appeal stands answered accordingly.

Consequently, this appeal is allowed. The impugned judgment and decree passed by the lower Appellate Court are set aside and the judgment and decree passed by the trial Court are upheld and the suit of the plaintiff stands decreed.

**(SABINA)
JUDGE**

December 08, 2009
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